

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LINDSAY AMOS,

CASE NO. 3:24-cv-05335-DGE

Plaintiff,

**ORDER GRANTING SUMMARY  
JUDGMENT AS TO STATE LAW  
CLAIM**

## KALAMA SCHOOL DISTRICT et al.

**Defendant.**

## I INTRODUCTION

In this wrongful termination case, this Court previously denied Defendants' motion for summary judgment with respect to Plaintiff's First Amendment retaliation claim, but granted summary judgment with respect to Plaintiff's state whistleblower act claim (to the extent Plaintiff was pursuing such a claim). (*See* Dkt. No. 40.) The Court further held that Plaintiff had insufficient opportunity to respond to Defendant's putative motion for summary judgment on Plaintiff's wrongful, constructive discharge claim, which had only been raised in a reply brief, and afforded Plaintiff an opportunity to respond. (*Id.* at 24–25.) Plaintiff has since filed her

1 supplemental brief. (Dkt. No. 41.) Having reviewed that brief, the Court concludes that there is  
 2 no genuine dispute of material fact as to the wrongful discharge claim, and GRANTS summary  
 3 judgment as to that claim.

## 4 II DISCUSSION

5 The Court assumes familiarity with the facts of this case, discussed extensively in the  
 6 prior Order. (Dkt. No. 40 at 2–8.) At issue here is Plaintiff’s claim for wrongful, constructive  
 7 discharge in violation of public policy. (*See* Dkt. No. 1 at 17.) The Court briefly discussed the  
 8 elements of such a claim in its prior Order (Dkt. No. 40 at 23–24) and expands on that analysis  
 9 here.

10 Washington recognizes a common law claim of constructive, wrongful discharge in  
 11 violation of public policy. *See Snyder v. Med. Serv. Corp. of E. Washington*, 35 P.3d 1158, 1161  
 12 (Wash. 2001) (en banc). This tort is a combination of two distinct claims. First, the elements of  
 13 wrongful termination in violation of public policy are: “(1) the employee’s discharge may have  
 14 been motivated by reasons that contravene a clear mandate of public policy, and (2) the public-  
 15 policy-linked conduct was a significant factor in the decision to discharge the worker.” *Peiffer v.*  
 16 *Pro-Cut Concrete Cutting & Breaking Inc.*, 431 P.3d 1018, 1031 (Wash. Ct. App. 2018).

17 Second, the elements of constructive discharge are: “(1) the employer deliberately made working  
 18 conditions intolerable, (2) a reasonable person in the employee’s position would be forced to  
 19 resign, (3) the employee resigned because of the intolerable condition and not for any other  
 20 reason, and (4) the employee suffered damages as a result of being forced to resign.” *Id.* (citing

21 *Barnett v. Sequim Valley Ranch, LLC*, 302 P.3d 500 (Wash. Ct. App. 2013). When a plaintiff  
 22 asserts the “hybrid” claim of wrongful, constructive discharge in violation of public policy,

23 the elements of a constructive discharge claim supplant the second element of the  
 24 wrongful termination in violation of a public policy claim. The first element of the tort

1 claim applies, although it is modified to address whether the intolerable condition that led  
 2 the employee to resign contravened a clear mandate of public policy. All four elements  
 3 of a constructive discharge claim apply.

4 *Id.*; see also Wash. Pattern Jury Instructions 330.51, Note On Use (“For a claim of constructive  
 5 discharge in violation of public policy, the jury should also be instructed on the four elements of  
 6 a constructive discharge claim in WPI 330.52”). Critically, the constructive discharge standard  
 7 is an objective one, and “an employee’s subjective belief that he had no choice but to resign is  
 8 irrelevant.” *Barnett*, 302 P.3d at 505 (quoting *Travis v. Tacoma Pub. Sch. Dist.*, 85 P.3d 959,  
 9 964 (Wash. 2004)). Likewise, “[t]he question of whether the working conditions were  
 10 intolerable is one for the trier of fact, unless there is no competent evidence to establish a claim  
 11 of constructive discharge.” *Haubry v. Snow*, 31 P.3d 1186, 1192 (Wash. Ct. App. 2001).

12 Here, the Court assumes that there is a dispute of material fact as to the first aspect of the  
 13 claim, violation of public policy, for the reasons stated in the Court’s analysis denying summary  
 14 judgment on the First Amendment retaliation claim. (See Dkt. No. 40 at 18–20.) However, the  
 15 Court finds that there is no dispute of material fact as to an objectively intolerable condition  
 16 amounting to constructive discharge. The record shows that Plaintiff was deeply upset by her  
 17 involuntary transfer from reading specialist to first grade instructor and it may have been  
 18 subjectively intolerable to her, but there is no “competent evidence” in the record that her  
 19 working conditions were objectively intolerable such that a reasonable person would have been  
 forced to resign.

20 In the Court’s prior Order, it directed Plaintiff to cite record evidence establishing  
 21 constructive discharge. (Dkt. No. 40 at 25.) Neither the evidence Plaintiff cited nor the record  
 22 as a whole establish that her working conditions became objectively intolerable. Plaintiff stated  
 23 that being a reading specialist was her “dream job” and that “to just throw me back into first  
 24

1 grade – it was sort of ironic” and “it was just awful.” (Dkt. No. 23-1 at 40.) Plaintiff personally  
2 believed that her job became “intolerable.” (*Id.* at 44.) After learning of the transfer on  
3 Thursday March 30, before spring break, she “could not physically or emotionally go to school  
4 Friday” and after the break, “I took medically supported, work stress related FMLA for the rest  
5 of the year.” (Dkt. No. 26 at 6.) Plaintiff’s brief states that “Whether objectively reasonable or  
6 not” she “was so distressed by the hostility and toxicity of my involuntary transfer that I never  
7 filed for unemployment benefits . . . It broke my heart to be forced out of my dream job at my  
8 dream school.” (Dkt. No. 41 at 2) (quoting Dkt. No. 26 at 7.) But whether the working  
9 conditions were “*objectively reasonable or not*” is the key inquiry here. The record establishes  
10 that the involuntary transfer was deeply distressing to Plaintiff, but not that it was impossible for  
11 her to continue in her position as a classroom instructor because it had become objectively  
12 intolerable.

13 In her response, Plaintiff argues that Defendants have failed to carry their burden to  
14 establish entitlement to summary judgment under Federal Rule of Civil Procedure 56(c)(1).  
15 (Dkt. No. 41 at 3.) This argument states only half of the equation and misstates the Parties’  
16 respective burdens. Under the rule, a movant may support their motion by “showing that the  
17 materials cited do not establish the absence or presence of a genuine dispute, or that an adverse  
18 party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(B).  
19 Here, Defendants claim that “Plaintiff has entirely failed to assert any intolerable working  
20 conditions, and such is not borne out in the evidence presented by any party.” (Dkt. No. 30 at  
21 11.) But “[w]here, as in this case, the defendant has invoked Rule 56 and asserted a lack of  
22 supporting evidence, the plaintiff must establish the existence of a triable issue which is both  
23 genuine and material to his claim.” *Pagano v. Frank*, 983 F.2d 343, 347 (1st Cir. 1993) (Selya,  
24

1 J.). “On issues where the nonmovant bears the ultimate burden of proof at trial . . . the  
2 nonmovant must ‘present definite, competent evidence to rebut the motion.’” *Id.*; *see also Weg*  
3 *v. Macchiarola*, 995 F.2d 15, 18 (2d Cir. 1993) (“If the movant satisfies the burden of  
4 establishing that there is no genuine issue of material fact, then the burden shifts to the  
5 nonmovant to proffer evidence demonstrating that a trial is required because a disputed issue of  
6 material fact exists.”); *Nowick v. Gammell*, 351 F. Supp. 2d 1025, 1033 (D. Haw. 2004)  
7 (“Summary judgment will thus be granted against a party who fails to demonstrate facts  
8 sufficient to establish an element essential to his case when that party will ultimately bear the  
9 burden of proof at trial.”). Here, Plaintiff cannot defeat the motion by simply invoking  
10 Defendants’ burden; she bears the burden of proof at trial on her wrongful, constructive  
11 discharge claim and needs to come forward with evidence establishing a genuine dispute of fact  
12 as to that claim. She has not done so, and so summary judgment is warranted.

13

14 **III CONCLUSION**

15 Accordingly, the Court GRANTS summary judgment as to Plaintiff’s claim of wrongful,  
16 constructive discharge in violation of public policy. As a result, only Plaintiff’s First  
17 Amendment retaliation claim remains live for trial. With all dispositive motions now resolved,  
18 the Parties should prepare for trial, and consider engaging in mediation.

19 Dated this 24th day of June, 2025.

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21 \_\_\_\_\_  
22 David G. Estudillo  
23 United States District Judge  
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